

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

BULLOCK FINE FURNITURE,
Employer

and

Case 25-RC-9969

CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN AND HELPERS
LOCAL UNION NO. 135,
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held August 24, 2000, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, warehouse employees, service technicians, helpers, and office clerical employees employed by the Employer at its North Shadeland, Indianapolis, Indiana facility; BUT EXCLUDING all professional employees, salesmen, guards, supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 25 employees¹ for whom no history of collective bargaining exists.

I. STATEMENT OF FACTS

The Employer, Bullock Fine Furniture, operates a facility on North Shadeland Avenue in Indianapolis, Indiana (hereinafter referred to as "the facility"). This facility serves as a distribution center and warehouse for the furniture and related home furnishings purchased by the Employer and sold at its various retail stores also located in Indianapolis, Indiana.

The issue in dispute is the alleged supervisory status and appropriate unit placement of approximately nine employees employed at the facility. The Employer contends that the four employees who occupy the position of driver as well as two of the warehouse employees, Wilson Nesbitt and James Miller, are supervisors within the meaning of Section 2(11) of the Act and should therefore be excluded from the unit. The Union takes the position that these employees do not possess supervisory authority and should be included in the unit.

The parties are in agreement to include office clerical employees within the petitioned unit, with the exception of three disputed positions. The Union contends that three office clerical employees, Robin Bullock, Kim Shields and Lori Baker, are supervisors within the meaning of Section 2(11) of the Act and should therefore be excluded from the unit. The Employer takes the position that these three employees do not possess supervisory authority and should be included in the unit.

There are a total of 33-34 persons employed at the facility, the highest ranking of which is James Bullock, the Employer's President and Chief Executive Officer. He is ultimately responsible for the entire operation of the distribution center, and directly supervises its office staff, including the clerical employees whose unit placement is disputed. Beneath Bullock in the

¹ The parties stipulated at the hearing that the following employees should be included within the unit: helpers Davey Jackson, Richard Blauclatt, Darryl Brown, Christopher Murphy, and Dez Williams; service technicians Gregory Beauchamp, Casey Bocock, and Carl Drennon; warehouse employees Denise Donovan, Thomas Estep, James Gunn, Jeff Turner, and Kevin Robinson; and clerical employees Michael Jones, Tyler Johnson, Jamie Jones, and Faye Tamari. The parties further stipulated that James Bullock, Jackie Benge, and Sue Walker should not be included within the unit found appropriate herein, and are not eligible to vote in the election ordered herein.

supervisory hierarchy is Chris Newcom, the General Warehouse Manager who directly supervises the facility's warehouse employees, service technicians, drivers and helpers. There are five basic job classifications at the facility: driver, helper, service technician, warehouse employee, and office clerical. There are four employees in the driver classification; five in the helper classification; four service technicians; seven warehouse employees; and seven clericals.

Robin Bullock and Michael Jones are employed by the Employer at the facility as clericals in the service department. Both of them receive service-related phone calls, put procedures into action for addressing these calls, and follow up to insure the problems or issues are resolved. Both are paid on an hourly basis and earn approximately twelve to thirteen dollars an hour. Lori Baker is also a clerical employee. Baker receives product from the delivery trucks and maintains records regarding the Employer's inventory. Baker is paid a salary and earns approximately \$500 per week. Tyler Johnson is also employed by the Employer as a clerical. Johnson prepares a list of customer deliveries for each day and routes the deliveries so that they are made in an efficient manner. Johnson also contacts the Employer's customers and gives them a time frame of the anticipated date and time they can expect delivery of their merchandise. Finally, Johnson also assists in the staging and inspection of product for delivery. Johnson is paid on an hourly basis and earns approximately ten dollars an hour. Kim Shields is also employed by the Employer as a clerical at the facility. Shields prints out a computer list of customer orders; answers questions about those orders; and does follow-up on the orders. She also enters purchase orders into the computer and places orders for special merchandise requested by customers. Shields is paid a salary and earns \$500 to \$550 a week. Another clerical at the facility is Faye Tamari. Tamari functions as a receptionist. She greets customers who enter the facility; answers the telephone; and bills customers after their orders have been completed. Tamari is paid on an hourly basis and earns approximately nine to ten dollars an hour. Jamie Jones is also employed as a clerical at the facility. Jones is paid on an hourly basis and earns approximately ten dollars an hour. Jones tracks orders that are placed by Kim Shields and makes delivery appointments so that the receiving department knows when shipments will be arriving. All clerical employees receive the same benefits and report directly to President Bullock. Jamie Jones and Robin Bullock earn an hourly wage between \$12 and \$13, while other hourly paid clerical employees earn approximately \$10. Baker and Shields, the two salaried employees, earn a converted hourly rate of approximately \$12.50 per hour. According to President Bullock, he does not know the reason Lori Baker is paid on a salaried basis. He testified that it was an arrangement agreed to between Baker and the person who managed the warehouse before Bullock assumed its management.

In addition to being employed as a clerical at the facility, Robin Bullock is also the stepdaughter of James Bullock. James Bullock is the Employer's President and Chief Executive Officer, and owns about 84% of the Employer's stock. Robin Bullock is 24 years old; has been employed by the Employer for approximately two years; and does not own any of the Employer's stock. Robin Bullock lived with James Bullock and her mother for approximately 17 years but has not lived with either of them for three or four years. Until approximately two weeks before the hearing, Robin Bullock, for an unknown period of time, delivered work assignments to service technician Carl Drennon. She told Drennon what needed to be done, when it needed to be done, and when products were to be delivered. Approximately two weeks before the hearing,

Drennon was instructed to report directly to Chris Newcomer, the General Warehouse Manager, to whom he currently reports.

Service technician Carl Drennon testified that he was told by Kim Shields that her title was Executive Assistant and that she was Jim Bullock's personal secretary. Drennon further testified that Shields informed him that she was clerical Jamie Jones' supervisor and that Jamie Jones had told him the same thing. According to President Bullock, until approximately 2 years ago, Shields worked with him in another facility. As the only two people who worked in that facility, Shields might have been regarded by some as his assistant, but since moving to the current facility, Bullock calls upon the specialized knowledge of all the clericals as a resource when needed. Drennon further testified that Lori Baker kept business cards on her desk which identified her as the inventory control manager/system analyst. Drennon testified that he knew of no other clericals, drivers, warehouse employees, or helpers who had business cards. Drennon also testified that he was told by an employee named Neil Johnson approximately nine months prior to the hearing that Baker had discharged Johnson. According to Drennon, Baker set her own work hours. She would sometimes not arrive until 10:30 AM and that she took extended lunch breaks.

In addition to the clerical employees described above, the Employer also has seven warehouse employees at its facility. There was no evidence offered as to what the specific duties of warehouse employees are at the facility, but the Employer contends that two of the employees, James Miller and Wilson Nesbitt, are statutory supervisors. President Bullock testified that Miller and Nesbitt have the responsibility of guiding and training other employees. Miller is the receiver at the facility and is responsible for bringing any delivered product into the facility and counting it correctly. Miller and Nesbitt direct other employees as to which items to unload from delivery trucks; where to place the merchandise, how to handle it; how to unpack it; how to prep it; and how to inspect it. Neither Miller nor Nesbitt receive any extra benefits for these functions, and they have no official title. James Bullock testified that Miller and Nesbitt receive extra money for these duties, but he could not identify how much. All of the warehouse employees report to the General Warehouse Manager.

Four drivers are also employed at the warehouse. Each driver is responsible for loading his truck; driving the truck to the delivery point; making the delivery; and then collecting payment for the merchandise from the customer. Each of the drivers has an assistant called a helper who rides in the truck with the driver and assists the driver.² According to President Bullock, drivers are responsible for their trucks, pads, and tools. Drivers make between nine and thirteen dollars an hour and report to the General Warehouse Manager. The drivers receive the same benefit package as employees in the helper classification and other members of the petitioned unit. The drivers are also required to insure that the helpers follow proper procedure,

² There was no evidence offered as to the job duties of employees in the helper classification other than that they assist the drivers and report to the General Warehouse Manager. However, since the parties stipulated that all of the employees in the helper classification should be included in the unit, the individuals in that classification are not in dispute.

and if a driver's helper does not follow procedure, the driver is held responsible for that problem. The record does not reflect, however, in what respect the driver is "held responsible" if his helper fails to follow proper procedure, and no such examples were provided on record. Drivers play no role in the hire of their helpers and are not allowed to select the helper with whom they wish to work. That decision is made by the General Warehouse Manager.³ Drivers earn an hourly wage ranging between \$9 and \$13, while helpers earn between \$7 and \$10 per hour.

II. DISCUSSION

The Employer seeks to exclude the Employer's four drivers as well as warehouse employees Wilson Nesbitt and James Miller from the unit on the grounds that these employees are supervisors within the meaning of Section 2(11) of the Act. The Union seeks to exclude three clericals, Kim Shields, Robin Bullock, and Lori Baker, from the unit on the grounds that these employees are also statutory supervisors. In representation proceedings the burden of proving that an individual is a statutory supervisor rests upon the party making the assertion, The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Tucson Gas & Electric Co., 241 NLRB 181 (1979). Here the record evidence is insufficient to establish that any of the employees described above are statutory supervisors.

Section 2(3) of the Act excludes from the definition of the term "employee" any individual employed as a supervisor, and Section 2(11) of the Act defines a supervisor as a person who possesses any of the twelve powers listed therein, or the authority to effectively recommend such personnel actions if in doing so s/he exercises independent judgment. In determining whether an individual is a statutory supervisor, the Board and the courts are reluctant to interpret Section 2(11) with an expansive approach since the finding of supervisory status denies to the individual the rights and protections of the Act, Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996). To this end, the Board closely examines the record in its determination of supervisory status, and conclusionary statements made by witnesses in their testimony, without supporting evidence, are insufficient to establish supervisory authority, Sears, Roebuck & Co., 304 NLRB 193 (1991).

It is undisputed that none of the contested employees possess the authority to independently hire, transfer, lay off, recall, promote, discipline (including discharge), reward, or adjust the grievances of employees. Instead, supervision of the employees at the facility appears to be highly centralized. All of the Employer's drivers, warehouse employees, service technicians, and helpers report directly to the General Warehouse Manager, Chris Newcomer; and all of the clerical employees report directly to James Bullock, the Employer's President and CEO.

³ In addition to the above-described employees, the Employer also employs three service technicians at the facility. The technicians repair furniture, whether it is new or customer-owned, that has been damaged. The parties stipulated that all of the service technicians should be included within any unit found appropriate herein.

In respect to its drivers, the Employer offered no evidence of supervisory authority. The only evidence offered in support of the Employer's position was testimony that each driver is responsible for the helper assigned to him. According to President Bullock, each driver is responsible for ensuring that his helper follows all of the Employer's procedures and that the delivery is accomplished correctly. There is no evidence that the drivers use any independent judgment in carrying out these functions. Since such direction of work is essentially routine and clerical in nature, involving little, if any independent judgment, it is not an indicia of true supervisory status, Aquatech, Inc., 297 NLRB 711, 717 (1990), *enfd. sub nom. NLRB v. Aquatech*, 926 F.2d 438 (6th Cir. 1991); Cablevision System Development Co., 251 NLRB 1319 (1980); Wirtz Manufacturing Company, Inc., 215 NLRB 252, 254 (1974). Drivers do not receive any special training for their positions and do not receive any additional benefits with respect to helpers. Instead, the direction of helpers by their driver is more akin to the advice and guidance of an experienced employee to less experienced ones. Providing such oversight is not the exercise of true supervisory authority, See High Performance Tube, Inc., 251 NLRB 1362, 1368 (1980); Hitchiner Manufacturing Company, 243 NLRB 927, 934 (1979). In addition, the helpers do not report directly to their respective drivers. Instead, they report to the General Warehouse Manager who also pairs helpers with drivers. Absent the possession of supervisory authority, and in view of the fact that the drivers share common supervision with helpers and other members of the petitioned unit; earn comparable wages; receive the same fringe benefits; and work similar hours, it is concluded that the Employer's drivers are not statutory supervisors and share a sufficient community of interest with members of the petitioned unit, to warrant their inclusion therein.

The same is true for warehouse employees James Miller and Wilson Nesbitt. According to the testimony of President Bullock, James Miller is responsible for directing employees that assist him with the receipt of products as well as the storage and labeling of product. It is Nesbitt's duty to direct employees who assist him in unpacking furniture, as well as overseeing the staging and inspection of product received. The record fails to divulge any specific instance where either Miller or Nesbitt actually exercised any of the powers set forth in Section 2(11) of the Act, or exercised independent judgment in performing their functions. Instead, like the drivers, Miller and Nesbitt, who are two of the most senior warehouse employees, appear to provide the guidance and advice of an experienced employee to a less experienced one. In light of the absence of evidence that Miller and Nesbitt exercise any true supervisory authority, they shall be included in the unit found appropriate herein.⁴

The Union asserts that three of the clericals at the facility, Kim Shields, Lori Baker, and Robin Bullock, are supervisors within the meaning of Section 2(11) of the Act and should therefore be excluded from the unit. The only evidence offered by the Union concerning Kim Shields to support its position, is that she referred to herself as an executive assistant and said she was Jamie Jones' supervisor. As previously mentioned, Shields may have regarded herself as

⁴ The Employer's President also testified that warehouse employees Miller and Nesbitt could recommend discipline, but there was no testimony as to what, if any, weight such recommendations are given. Nor did the Employer offer any evidence of specific instances where such recommendations had been made. Therefore, such testimony is conclusionary and insufficient to establish supervisory status.

President Bullock's assistant when they worked together at another facility several years ago, but President Bullock testified that he currently relies no more upon information from Shields, than he does information from any other clerical. Jamie Jones also allegedly said that Kim Shields was her supervisor. The Union offered no other evidence of any supervisory authority allegedly possessed or exercised by Shields. Referring to oneself a supervisor is not sufficient to establish supervisory status under the Act. Titles are a secondary indicia of supervisory status, but there is no need to consider such secondary indicia when there is no evidence that the individual actually possesses any of the powers set forth in Section 2(11) of the Act, Hausner Hard-Chrome of KY, Inc., 326 NLRB No. 36, Sl. Op. at 2-3 (August 27, 1998). The record does not reflect the reason Shields is paid a salary, but when the salary is converted to an hourly wage, it is comparable to that earned by other clerical employees. Consequently, the record is insufficient to conclude that Kim Shields is a statutory supervisor.

The evidence also fails to establish that Lori Baker is a supervisor. In support of its position that Baker is a supervisor, the Union offered hearsay evidence that she discharged an employee approximately nine months before the hearing; she has business cards on her desk; she is salaried; and she works irregular hours and sometimes takes long lunches. As to the hearsay evidence, Carl Drennon testified that he had been told by an employee named Neil Johnson that Baker had discharged Johnson. Such a statement is hearsay and lacks probative value to determine the supervisory status of Baker. Nor was any evidence offered regarding whether Baker had permission from the Employer to come in late or take long lunches. The fact that Baker has business cards and is salaried are secondary indicia of supervisory status, but as stated above, such secondary indicia are not relevant to determine supervisory status, absent evidence that the disputed individual possesses any of the primary indicia of supervisory status.

Finally, the evidence also fails to establish that Robin Bullock is a supervisor within the meaning of Section 2(11) of the Act. The Union's evidence on this issue was based entirely on the testimony of Carl Drennon, a service technician at the facility. Drennon testified that until approximately two weeks before the hearing, he received his work assignments from Robin Bullock. The length of time Bullock gave Drennon his work assignments was not disclosed. This evidence is insufficient to establish that Robin Bullock is a supervisor because there is no evidence that Bullock exercised any independent judgment in making those assignments. It might well have been that Bullock was simply relaying the assignments from some other management official. The exercise of independent judgment in the assignment and direction of work is a prerequisite for a finding that an individual is a statutory supervisor, Nursing Center at Vineland, 318 NLRB 901, n. 1 (1995). Based upon the above, the evidence fails to establish that Robin Bullock is a supervisor.⁵ In view of the fact that Baker, Bullock and Shields earn incomes

⁵ Though it was not raised by the Union, the relationship between Robin Bullock and James Bullock, the Employer's President and CEO, raises the question of whether she shares a sufficient community of interest with her fellow employees to be included in the unit. The evidence reveals that she does. Robin Bullock does not live with James Bullock. She works a normal forty hour week for the Employer and receives the same benefits as the other employees. She owns no stock in the Employer and is subject to the same work rules and conditions as the other employees. Therefore, Bullock shares a sufficient community of interest with other

comparable to other clerical members of the petitioned unit; share common supervision and substantially similar working hours as other clerical unit members; and receive the same fringe benefits as all unit members; it is concluded that they share a sufficient community of interest with other members of the unit found appropriate herein, to be included within the unit

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees in the unit who are engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chauffeurs, Teamsters, Warehousemen, and Helpers Local Union No. 135.

IV. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **September 12, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

members of the unit to warrant her inclusion therein, Pandick Press Midwest, Inc., 251 NLRB 473 (1980).

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 19, 2000.

DATED AT Indianapolis, Indiana, this 5th day of September, 2000.

/s/ Rik Lineback
Rik Lineback
Acting Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

RLF/mb/ar

R25com\decision\9969dde.doc

440-1720-0100
440-1760-6701
460-7550-7500
460-7550-8700